

# Legal Tools for Case Management

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**ABA STANDARDS RELATING TO COURT DELAY REDUCTION**

**Standard 2.50**  
**Case flow Management and Delay Reduction: General Principle**

*From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time other than reasonably required for pleadings, discovery, and court events, is unacceptable and should be eliminated. To enable just and efficient resolution of cases, **the court, not the lawyers or litigants, should control the pace of litigation.** A strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket.*

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**SAMPLE CASE-SPECIFIC TIME STANDARDS**

Table 2 AMERICAN BAR ASSOCIATION TIME STANDARDS*			
<i>Time Within Which Cases Should be Adjudicated or Otherwise Concluded</i>			
Case Type	90%	98%	100%
<b>Civil</b>	12 months	18 months	24 months
<b>Criminal Felony</b>	120 days	6 months	365 days
<b>Criminal Misdemeanor</b>	30 days	---	90 days
<b>Domestic Relations</b>	3 months	6 months	12 months

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### NC Timelines: Supreme Court

- Civil
  - 90% disposed in 365 days from filing
  - 98% in 545 days
  - 100% in 730 days

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### Family Court Standards

- Custody
  - Temporary orders within 90 days of filing
  - Mediation orientation within 45 days of filing
  - Mediation complete within 90 days
  - Permanent orders entered within 90 days in 90% of cases and 360 days in 98% of cases
- Orders and Judgments
  - All should be filed within 15 days following conclusion of hearing. Complex cases up to 30 days maximum

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### Calendaring

- **“Five months after a complaint is filed, the Clerk shall place that case on a ready calendar, unless time is extended by written order of the ... Chief District Court Judge.”**
  - Calendars to be published no later than 4 weeks prior to trial
- If a district has a Trial Court Administrator, “ a case tracking system shall be maintained.”
- Rule 2(c) Rules of Superior and District Court

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### Continuances

- “No continuance shall be granted except upon application to the court. A continuance may be granted only for good cause shown and upon such terms and conditions as justice may require. Good cause for granting a continuance shall include those instances when a party to the proceeding, a witness, or counsel of record has an obligation of service to the State of North Carolina, including service as a member of the General Assembly or the Rules Review Commission.”

- **Rule 40(b), Rules of Civil Procedure**

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### Continuances

- “When an attorney is notified to appear for the setting of a calendar, pretrial conference, hearing of a motion or for trial, he must, consistent with ethical requirements, appear or have a partner, associate, or other attorney familiar with the case present. Unless an attorney has been excused in advance by the judge before the matter is scheduled and has given proper notice to his opponent, a case will not be continued.”

- **Rule 2(e), Superior and District Court Rules**

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### Continuances

- “Continuances are not favored and the party seeking a continuance has the burden of showing sufficient grounds for it.”

- *Shankle v. Shankle*, 289 NC 473 (1976)
- *McIntosh v. McIntosh*, 184 NC App 697 (2007)

- But be careful when request is based on last minute withdrawal of counsel

- *Ruth v. Ruth*, 158 NC App 293 (2003)
- *Skelly v. Skelly*, 215 NC App 580 (2011)
- *Shankle*

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### Discovery

- “Counsel are required to begin promptly such discovery proceedings as should be utilized in each case, and are authorized to begin even before the pleadings are completed. Counsel are not permitted to wait until the pre-trial conference is imminent to initiate discovery.”

- **Rule 8, Superior and District Court Rules**

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### Civil Procedure Rule 26(b)(1a)

“The frequency or extent of use of the discovery methods ...shall be limited by the court if it determines that:

- (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).”

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### Discovery Conference

- Civil Procedure Rule 26(f)
  - Party may request, or “at any time after commencement of an action the court may direct”, a discovery conference
  - Court is to “consider the nature and basis of the parties claims,” explore possibilities of settlement, and create a discovery plan
  - Discovery conference can be in person, by telephone or by videoconference

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### Rule 26(f)(3) Discovery Plan

- Consent plan/order shall contain:
  - Statement of the issues
  - schedule of discovery
  - Address electronically stored evidence
  - Any limitation on discovery
  - Date discovery shall be completed
  - Any protective order the court deems "appropriate under the circumstances"
  - Other matters, including allocation of discovery expenses

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### Civil Procedure Rule 37(g)

- "If a party or the party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by Rule 26(f), the court may, after opportunity for hearing, require such party or the party's attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure."

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### Custody Mediation

- GS 50-13.1 and Uniform Rules
- Court may waive mediation on own motion or on motion by a party for good cause.
- Good cause includes, but is not limited to:
  - Undue hardship
  - Agreement to mediate privately
  - Allegations of abuse or neglect of child
  - Allegations of alcoholism, drug abuse or spouse abuse
  - Allegations of severe psychological, psychiatric or emotional problems
  - Party resides more than 50 miles away **may be** good cause (Rules continue to say "shall"; statute says "may")

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### Other ADR

- Family Law Arbitration Act
  - GS 50-41 through 50-62
- Divorce Education
  - Required by 1999 NC Sess. Laws 237, sec. 17.16(a)
- Parenting Coordinators
  - GS 50-90 though 50-100

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### GS 50-13.5: Temporary Orders

- (d) Service of Process; Notice; Interlocutory Orders. –
- (1) Service of process in civil actions for the custody of minor children shall be as in other civil actions. ... Motions for custody of a minor child in a pending action may be made on 10 days notice to the other parties and after compliance with G.S. 50A-205.
  - (2) **If the circumstances of the case render it appropriate**, upon gaining jurisdiction of the minor child the court may enter orders for the temporary custody and support of the child, pending the service of process or notice as herein provided.
  - (3) A temporary order for custody which changes the living arrangements of a child or changes custody shall not be entered ex parte and prior to service of process or notice, unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse or that there is a substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of North Carolina courts.

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### Temporary orders

- No limit on number of temporary orders in a case
  - Changed circumstances is not necessary to modify
  - Long term temporary orders are not favored
    - *Simmons v. Simmons*, 160 NC App 671 (2003)
- Can order evaluations or treatment per Civ Pro Rule 35
  - See *Jones v. Patience*, 121 NC App 434 (1996)
- Can be heard on affidavits alone
  - *Story v. Story*, 57 NC App 509 (1982)
- Are vacated upon dismissal of custody claim
  - See *Collins v. Collins*, 18 NC App 45 (1973)
  - Discussion in bench book

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### Pretrial Conferences

- GS 1A-1, Rule 16(a): Judge *may* order in any case
- Rule 7, Rules of Superior and District Court: There *shall* be a pretrial conference in every civil case

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### Civil Procedure Rule 16

Pretrial conference is a conference to consider:

- (1) The simplification and formulation of the issues;
- (2) The necessity or desirability of amendments to the pleadings;
- (3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (4) The limitation of the number of expert witnesses;
- (5) The advisability or necessity of a reference of the case, either in whole or in part;
- (6) Matters of which the court is to be asked to take judicial notice;
- (7) Such other matters as may aid in the disposition of the action.

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### Pretrial Order

- Controls all subsequent court action, unless modified to prevent manifest injustice
  - *Inman*, 136 NC App 707 (2000)
  - *White v. Davis*, 163 NC App 21 (2004)

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### Duty to Manage

- It is the affirmative duty of the trial judge to supervise and control a trial to prevent injustice to either party and in discharging that duty the trial judge has large discretionary powers.
  - *Hines v. Pierce*, 23 NC App 324 (1974)
- “The fair but expeditious dispatch of litigation remains the duty of the trial courts.”
  - *Ward v. Taylor*, 68 NC App 74 (1984)

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### Authority to Manage

- “In the absence of a controlling statutory procedure or recognized rule of procedure, the conduct of a trial rests in the discretion of the trial court.”
  - *Frazier v. Glasgow*, 24 NC App 641 (1975)
- The appellate courts “will not interfere with the exercise of the trial court’s duty to control the conduct and course of a trial absent a showing of manifest abuse.”
  - *State v. Covington*, 290 NC 313, 335 (1976)

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### Controlling Evidence

#### Evidence Rule 611. Mode and order of interrogation and presentation.

(a) Control by court. - The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

1. make the interrogation and presentation effective for the ascertainment of the truth,
2. avoid needless consumption of time, and
3. protect witnesses from harassment or undue embarrassment.

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### Controlling Evidence

**Evidence Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.**

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”

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### Cases

- *Woody v. Woody*, 127 NC App 626 (1998)
  - Court can limit number of witnesses when it finds witnesses are “incompetent, irrelevant or cumulative”
  - Be careful not to limit rebuttal evidence unfairly
- *Wolgin v. Wolgin*, 217 NC App 278 (2011)
  - Court can impose 2-day time limit on evidence
  - Court can refuse to read 562 email messages

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### Testimony by phone or skype?

- Civil Procedure Rule 43:
  - “In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules.”
  - Motions may be heard on affidavits or oral testimony
  - Use of depositions in trial and hearings – see Rule 32

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*In re S.H.*, 206 NC App 761 (2010), unpublished

TPR proceeding where mom testified in part by telephone - citing **Evidence Rule 611**:

“The trial judge has inherent authority to supervise and control trial proceedings. The manner of the presentation of the evidence is largely within the sound discretion of the trial judge and his control of a case will not be disturbed absent a manifest abuse of discretion.” *State v. Davis*, 317 N.C. 315, 318, 345S.E.2d 176, 178 (1986).”

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### Alternative Methods of Testifying

**50A-111. Taking testimony in another state.**

(a) ...[A] party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

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### Entry of Judgment

- Civil Procedure Rule 58:

“[A] judgment is entered when it is reduced to writing, signed by the judge, and filed with the clerk of court.”

- No more *nunc pro tunc* in civil cases

- See <https://civil.sog.unc.edu/no-more-nunc-pro-tunc-in-civil-cases/>

- *Dabbondanza v. Hansley*, 791 SE2d 116 (2016)

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